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May 28, 1997

The Honorable Gregory J. Smith  
San Diego County Assessor-  
Recorder-Clerk  
Attention: Mr. J

In Re: Transfers of real property into Trusts,  
Change in Ownership Consequences

RECEIVED

MAY 29 1997

PROP. TAX ADMIN.  
State Board of Equalization

Dear Mr.

This is in response to your letter of April 23, 1996, to Mr. Gene Palmer of the Policy, Planning, and Standards Division which has been referred to me for legal analysis. You provided documents for five separate situations involving transfers of real property into trusts, and asked us to confirm that your treatment of each transfer, as to change in ownership consequences was correct. The facts involving each transfer were limited to the information on the documents.

You also indicated on the phone recently that you had concerns as to the validity of the trusts into which real property had been transferred, and as to whether the assessor's office should recognize transfers of real property by certain trust documents. Thus, we also have reviewed the documents in light of the applicable provisions of law in the California Probate Code. It is the responsibility of the assessor's office, however, to make the final determination of whether an assessable transfer of real property has occurred after further inquiry of the property's owners and review of all pertinent documents involved in the transfer.

Applicable Law

Change in ownership is defined by Section 60 of the Revenue and Taxation Code (all section references herein are to the Revenue and Taxation Code unless otherwise indicated) "as a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest."

Section 61 provides in relevant part that "[e]xcept as otherwise provided in Section 62, change in ownership as defined in Section 60 includes, but is not limited to:

\* \* \*

"(d) The creation, transfer, or termination of any joint tenancy interest, except as provided in subdivision (f) of Section 62, and in Section 63 and in Section 65.

(e) The creation, transfer, or termination of any tenancy in common interest, except as provided in subdivision (a) of Section 62, and in Section 63."

Section 62, which provides a number of exclusions from change in ownership, provides in pertinent part:

"Change in ownership shall not include:

(a)(1) Any transfer between co-owners which results in a change in the method of holding title to the real property transferred without changing the proportional interests of the co-owners in that real property...

\* \* \*

"(d) Any transfer by the trustor, or by the trustee's spouse, or by both, into a trust for so long as the (1) the transferor is the present beneficiary of the trust, or (2) the trust is revocable; or any transfer by a trustee of such trust described in either clause (1) or (2) back to the trustor; or any creation or termination of a trust in which the trustor retains the reversion and in which the interest of others does not exceed 12 years duration. (See also Property Tax Rule 462.160, (b)(1), (b)(2), (b)(4) (18 California Code of Regulations § 462.160)).

(e) Any transfer by an instrument whose terms reserve to the transferor an estate for years or an estate for life; however, the termination of such an estate for years or an estate for life shall constitute a change in ownership, except as provided in subdivision (d) and in section 63.

(f) The creation or transfer of a joint tenancy interest if the transferor, after the creation or transfer, is one of the joint tenants as provided in subdivision (b) of Section 65."

Property Tax Rule 462.060 which interprets change in ownership pertaining to life estates in Section 62(e) stated above, provides in relevant part:

"(a) Life Estates. The creation of a life estate in real property is a change in ownership at the time of transfer unless the instrument creating the life estate reserves such estate in the transferor or the transferor's spouse. However, the subsequent transfer of such a life estate by the transferor or the transferor's spouse to a third party is a change in ownership. Upon termination of such a reserved life estate, the vesting of a right to possession or enjoyment of a remainderman (other than the transferor or the transferor's spouse) is a change in ownership."

A life estate is defined as an estate whose duration is limited to the life of the person holding it, or to the life of some other person. Estate of Smythe (1955) 132 Cal.App.2d 343. A life estate can be granted or reserved by deed or created by will. The reservation of a life estate in a recorded instrument creates a right or privilege for the benefit of the grantor or others in the land and withholds that right or privilege from the operation of the grant. By the reservation, the grantor reserves something in himself or others which is newly created by the grant. Victory Oil Co. v. Hancock Oil Co. (1954) 125 Cal. App.2d 222.

This definition is consistent with the rationale for the exclusion adopted by the Legislature in Section 62 (e). The rationale, stated in Implementation of Proposition 13, Vol. I, Property Tax Assessment, by the Assembly Revenue and Taxation Committee, October 29, 1979, page 29, is as follows:

(3)...Transfers with a retained life estate are not ownership changes until the life tenant dies. The life tenant has the dominant or primary interest under the value equivalence element of the general change in ownership definition, and there is no transfer of the present interest in the property until the life tenant dies and the property vests in the remainder. At that time, the provisions of trusts and interspousal transfers permitting, a change in ownership shall be deemed to have occurred (Section 62(e)).

Notwithstanding the foregoing provisions, the assessor has the responsibility of determining whether an interest in real property is a life estate and when it may have terminated and/or transferred for change in ownership purposes.

As you are aware, the exclusion from change in ownership for certain transfers between spouses is provided in the California Constitution (Subdivision (g)(1) of section 2 of Article XIII A), which is codified by Section 63 and are stated here in relevant part:

“Notwithstanding any other provision in this chapter, a change in ownership shall not include any interspousal transfer, including, but not limited to:

(a) Transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a trustee of such trust to the spouse of the trustor.

(b) Transfers which take effect upon the death of a spouse.

\* \* \*

“(d) The creation, transfer or termination solely between spouses of any coowner’s interest.”

Section 65 provides in pertinent part:

“(a) The creation, transfer or termination of any joint tenancy is a change in ownership except as provided in this section, Section 62, and Section 63. Upon a

change in ownership of a joint tenancy interest only the interest or portion which is thereby transferred from one owner to another owner shall be reappraised.

(b) There shall be no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after such creation or transfer, are among the joint tenants. Upon the creation of a joint tenancy interest, described in this subdivision, the transfer or transferors shall be the 'original transferor or transferors' for purposes of determining the property to be reappraised on subsequent transfers. The spouses of original transferors shall also be considered original transferors within the meaning of this section.

(c) Upon the termination of an interest in any joint tenancy described in subdivision (b), the entire portion of the property held by the original transferor or transferors prior to the creation of the joint tenancy shall be reappraised unless it vests, in whole or in part, in any remaining original transferor, in which case there shall be no reappraisal. Upon the termination of the interest of the last surviving original transferor, there shall be reappraisal of the interest then transferred and all other interests in the properties held by all original transferors which were previously excluded from reappraisal pursuant to this section."

(See also Property Tax Rule 462.040 (18 California Code of Regulations § 460.040)).

The following discussion of provisions of the Probate Code are applicable to trusts and are relevant to your inquiries:

Revocable trusts are created as will substitutes, and are used to transfer property used presently for the benefit of the transferors, which upon their death, will pass to their heirs without probate. It is generally intended that the property transferred into trust is to be held and administered by a trustee for the benefit of other(s), the grantor/trustor and beneficiaries. (60 Cal Jur 3d (Rev) Trusts §1)

A trust, therefore, involves the separation of the legal and equitable interests in the property, with the legal title held by the trustee, and the equitable interest held by the trustor/grantor. (60 Cal Jur 3d (Rev) Trusts § 1) Where equitable and legal interests meet or unite in the same person, a merger of title occurs, causing the trust to be merged or terminated. (60 Cal Jur 3d (Rev) Trusts § 286) Thus, if the sole trustee is also the sole beneficiary, the trust may terminate by merger of the legal and equitable interests. (60 Cal Jur 3d (Rev) Trusts § 51) However, a relevant exception to this Doctrine of Merger is in Section 15209 of the California Probate Code. A trust is not merged if the trust provides for one or more successor beneficiaries after the death of the trustor, even though there is one trustor who is the sole trustee and the sole beneficiary (Probate Code § 15209(a)).

A valid express trust requires manifestation of the trustor's intention to create a trust (Probate Code § 15201), trust property (Probate Code § 15202), at least one identifiable beneficiary (Probate Code § 15205) and a lawful trust purpose (Probate Code § 15203). (60 Cal Jur. 3d (Rev), Trusts §22; Walton v. City of Red Bluff (1991) 2 Cal.App.4th 117, review denied).

Under California law, a trust can be created by (1) the property owner declaring in a document that he or she holds the property as trustee (Probate Code § 15200(a), (2) actual transfer of property by the owner to another person as trustee (Probate Code § 15200(b), and, (3) a written instrument conveying the trust property signed by the trustor or trustor's agent, if authorized in writing to do so.

The statute of frauds, which generally bars an oral creation or declaration of trust involving real property (Probate Code § 15206), is satisfied if the trust is declared by any writing in which the fiduciary relation between the parties can be clearly read. Further, the law does not require that all the conditions and terms of a trust in real property be expressed in a single document. Thus, a valid trust may be created by a deed of real property, a will stating the terms of the trust, and an instrument signed by the trustee agreeing, without restating them, to the terms contained in the will. (60 Cal Jur. 3d (Rev), Trusts §33). Further, there is a presumption that all trusts are revocable, thus a document must state the trust is irrevocable or the law presumes revocability. (Probate Code § 15400). Finally, a trust that relates to real property may be recorded in the county recorder's office in the county where all or a portion of the real property is located. (Probate Code § 15210) More frequently, a deed transferring real property is recorded, rather than the trust document:

Sample A., Part 1.

Can a trust be a life tenant in a life estate?

With respect to the following separate transfers of real property into trusts, you inquire if a trust can be a life tenant in a life estate, and if so, what are the reappraisal consequences. Your view is that a trust is not a natural person, therefore, it cannot be a life tenant in a life estate.

Sample A., Part 1.

A quitclaim deed states that Archie P. Kelley, Sr., as trustee for the Archie P. Kelley Survivor's Trust, transferred an undivided 1/80th interest in Lots 1 and 2 of the Promontory at Scripps Lake, in the City of San Diego, to Archie P. Kelley, Sr., as trustee for the Archie P. Kelley Survivor's Trust, dated October 21, 1989, and subject to a life estate in his wife, Shirley M. Kelley.

Mr. Kelley, Sr. presumably owned the 1/80 interest in the two lots as his separate property, and subsequently had transferred it to a trust. The deed states that Mr. Kelley, Sr., as trustee for the trust, transfers the real property interests. Thus, presumably also, Mr. Kelley, Sr. has created a trust under the laws of this state, which provide that a trust can be created by the

property owner declaring that he holds the property as trustee (Probate Code Section 15200(a)), or by a deed of real property, which constitutes a "writing signed by a trustee." (Probate Code Section 15206(a)).

Mr. Kelley, Sr.'s initial transfer of the real property interests into the trust would have been a change in ownership (Section 60) that could have been excluded from change in ownership if the trust were revocable or if he were the present beneficiary of the trust. (Section 62(d) and Property Tax Rule 462.160 (b)(1),(2)). Mr. Kelley, Sr.'s subsequent transfer, as trustee, of the real property interests and creation of a life estate interest in his wife also is a change in ownership (Section 60), which, in our opinion, could be excluded from change in ownership if the trust were still revocable or if Mr. Kelley, Sr. were the remainder beneficiary of the Trust. Please be advised, however, that a February 20, 1997, Summary Judgment in Leckie as Successor Trustee v. Orange County, et al., Orange County Superior Court No. 758164, (copy enclosed), holds that a life estate is not substantially equal to a fee interest in real property. An appeal is contemplated, and this case has not been considered for purposes of this analysis.

Please note that the transfer by Mr. Kelley, Sr., as trustee, was not a transfer by a spouse since at the time of this transfer, the real property interests were held by the trust rather than by Mr. Kelley, Sr. A spousal transfer would have consisted of Mr. Kelley, Sr. transferring the interests into the trust subject to a life estate interest in his wife. Although this was not a spousal transfer, the same result was achieved; further, the provisions of Section 63 are broad, "a change of ownership shall not include any interspousal transfer, including, but not limited to." Therefore, the transfer of the real property interests and creation of a life estate to Shirley Kelley by Mr. Kelley, Sr., as trustee, should be excluded from change in ownership under subdivision (g)(1) of section 2 of Article XIII A of the Constitution and Section 63. (See also Property Tax Rule 462.160(b)(4) and (6)).

With respect to your question, a trust cannot be a life tenant in a life estate. A trust has been defined as a fiduciary relationship in which ownership of the property is divided between a trustee who holds legal title to the property for the benefit of a beneficiary who holds equitable title to the same property. Gonsalves v. Hodgson (1951) 38 Cal.2d 91. The beneficiary is regarded as the real owner of the property, the trustee being merely the depository of the legal title. Estate of Feuereisen (1971) 17 Cal.App. 3d 717. A life estate is dependent upon the life of a natural person. If a person is granted a life estate, he or she is the life tenant for the duration of his or her life, unless otherwise indicated. Estate of Smythe, p. 343. In this case, Shirley Kelley is the life tenant for the duration of her life, and, as such, holds a present beneficial interest in the interests in the two lots held in trust which is substantially equal to the value of the fee interest. Upon Shirley Kelley's death, the life estate terminates and the beneficial interest in the property will be transferred to Mr. Kelley, Sr. or whomever is designated by the trust as the remainder beneficiary. If Mr. Kelley, Sr. is the remainder beneficiary, since he is the grantor, there would not be a change in ownership. Ultimately, the Assessor has the responsibility for determining whether there has been an assessable transfer of real property, and as such, would need to make the appropriate inquiries.

Sample A., Part 2.

The "Trust Transfer Deed" states that Robert Freeman Cassidy, as grantor/trustee, conveyed an undivided one-half tenancy in common interest in his residence (Lot 6, Escondido Tract No. 369-R, Map No. 011071), to himself, as trustee of the Cassidy Family Trust, and an undivided one-half tenancy in common interest in the property to his wife, Marjorye K. Rogers, as trustee of the Survivor's Trust of the Rogers Family Trust; to be held as by the two trusts as tenants in common. Tenants in common, like joint tenants, have an equal right to possession of the entire property, although they own only part of the property. (16 Cal Jur 3d (Rev) Costs § 21). The deed further states that each party is granted a life estate in the residence as set forth in the "life estate agreement attached hereto and incorporated herein." As in the previous case, Mr. Cassidy has apparently created a valid trust by declaring that he holds the property as trustee, and signing a deed of real property. (Probate Code §§ 15200(a), 15206(a))

The "Life Estate Agreement," executed by Robert Freeman Cassidy, as Trustee of the Cassidy Family Trust and Marjorye K. Rogers, as Trustee for the Rogers Family Trust, is to be rescinded in the event of a divorce, and provides that upon the death of Robert Freeman Cassidy or Marjorye K. Rogers, the survivor shall have a life estate in the residence, subject to the condition that the survivor continue to live there. In this case, Mr. Cassidy and Ms. Rogers have agreed that if the surviving spouse ceases to live in the residence for six consecutive months or longer, the life estate of the surviving spouse will terminate. Thus, a change in ownership of the tenancy in common interests will occur upon termination of the life estate either upon this condition not being met or upon the death of the surviving spouse, subject to a Section 63 exclusion from change in ownership or a possible Section 63.1 exclusion from change in ownership, depending upon the circumstances. (Section 62(e)); Property Tax Rule 462.060 (a); Estate of Smythe, p. 343).

A life estate is created where the transferor expresses the intent to convey to the transferee a right to possess, use, or enjoy property for the period of the transferee's life or the life of another. (Bernal v. Wade (1873) 46 Cal. 663). Nonetheless, a life estate may terminate on the happening of a condition or on the breach of a condition prescribed by the creator of the estate as a limitation on its continuance. (30 Cal Jur 3d (Rev), Enforcement of Judgments § 22; see also Re Estate of Reinhardt (1887) 74 Cal. 365). Such conditions do not invalidate the grant of the life estate which, as in the case of any other freehold estate, can provide for a termination upon the occurrence of a certain event such as for failure to reside on the premises. (Taylor v. McCowen (1908) 154 Cal. 798; 30 Cal Jur (Rev) Enforcement of Judgments § 22). Further, staff has been of the view that the granting of a life estate subject to conditions, which, if they occur, will terminate the estate is nevertheless a change in ownership. (Eisenlauer Letter, dated June 30, 1983, annotated in Property Taxes Law Guide, Volume III, 220.0236).

Mr. Cassidy, as grantor, conveyed the undivided interest in the residence to the Cassidy Family Trust, with himself as trustee. This transfer would have constituted a change in ownership (Section 60) that could have been excluded from change in ownership if the trust were revocable or if he were the present beneficiary of the trust. (Section 62(d) and Property Tax Rule 462.160

(b)(1),(2)). Mr. Cassidy also conveyed the undivided interest in the residence in trust to his wife, as trustee of a trust. This transfer also was a change in ownership (Section 60) that could have been excluded from change in ownership as an interspousal transfer under subdivision (g)(1) of section 2 of Article XIII A of the Constitution and Section 63 (a), which takes precedence over all other change in ownership provisions of the code. (See also Property Tax Rule 462.160 (b)(4)).

As to the life estate aspect, the creation of a life estate for a spouse constitutes a change in ownership even though the estate is to terminate upon the specified condition; that creation also can be excludable from change in ownership as an interspousal transfer. (Section 63) As Robert Cassidy has created a life estate in the residence held by their respective trusts in tenancies in common, the surviving spouse will remain the beneficial owner of his or her life estate, with legal title continuing to be held by the two trusts, each holding a one-half undivided tenancy in common interest for the remainder beneficiaries. If the surviving spouse fails to meet the residency condition or upon the death of the surviving spouse, the life estate will terminate. Upon termination of the life estate, a change in ownership will occur of the residence held by the two trusts, each trust holding an undivided one-half tenancy in common interest. (Sections 60, 61(f), Property Tax Rule 462.060(a)(1)). If the remainder beneficiaries designated by Robert Cassidy and Marjorye Rogers in their respective trusts are children and/or a spouse, the change in ownership occurring upon the termination of the life estate may be excluded. (Sections 63.1 and 63).

#### Sample B.

Beverly Law created a joint tenancy in herself and Claude Allen Pigg, aka Claude Allen Law, in her residence, pursuant to a grant deed dated October 8, 1991, which constituted a change in ownership. (Sections 60 and 61(d), 65(a)). The deed does not indicate whether Claude Law is the husband or son of Beverly Law. As joint tenants, each owned an undivided half interest in the property with right of survivorship. The creation, transfer or termination solely between spouses of any coowner's interest is excluded from change in ownership as an interspousal transfer under Section 63(d). Assuming that Claude Law is the husband of Beverly Law, her creation or transfer of a joint tenancy to him is excluded from change in ownership as an interspousal transfer under Section 63 (d). Further, the subsequent termination of Claude Law's joint tenancy interest upon Beverly Law's transfer of her undivided half interest in the joint tenancy into trust, also is excluded from change in ownership as an interspousal transfer under Section 63(d), which Section 63, as discussed previously, takes precedence over all other change in ownership provisions. As you are aware, if Claude Law is a son of Beverly Law, the parent-child exclusion available in Section 63.1 would be applicable to Beverly Law's creation and/or termination of the joint tenancy interest in Claude.

The creation of a joint tenancy interest may also be excluded from change in ownership if the transferor is one of the joint tenants after a joint tenancy is created. (Sections 62(f) and 65(b) and Property Tax Rule 462.040 (b)(1)). Thus, if Claude Law is unrelated to Beverly Law, the creation of a joint tenancy interest also is excludable from change in ownership because Beverly Law is a transferor who was one of the joint tenants after the joint tenancy is created. As such,



Beverly Law became an original transferor for purposes of determining the property to be reappraised upon subsequent transfers. (Section 65(b); Property Tax Rule 462.040 (b)(1))

Subsequently, pursuant to a grant deed dated August 14, 1995, Beverly Law, as the grantor, conveys to the Beverly Law Family Trust, her one-half interest in the same property as above. As discussed previously, a trust in real property can be created by a deed that is signed by the grantor. (Probate Code §15206(a)) The transfer of Beverly Law's joint tenancy interest in the real property into the trust by the deed dated August 14, 1995, terminates the joint tenancy, resulting in the property being held as a tenancy in common by the Beverly Law Family Trust and by Claude Law, with each holding an undivided one-half interest. The termination of the joint tenancy caused by Beverly Law's transfer of her joint tenancy interest into the Beverly Law Family Trust constitutes a change in ownership of the property transferred, subject to any applicable exclusions from change in ownership. (Sections 60, 61(d) and 65(a)).

A deed, which purports to convey an entire fee interest in land in which the grantor owns only an undivided half interest, is not void, but passes whatever interest the grantor has. Stark v. Barrett (1860) 15 Cal. 361, 368. Further, one joint tenant can transfer his share in the property without the consent of the other (Riddle v. Harmon (1980) 102 Cal.App.3d 524, 527), and where he or she attempts to convey the whole property, the conveyance is not void, but merely operates to transfer his or her interest. Handy v. Shiells (1987) 190 Cal. App.3d 512, 517) As such, the joint tenancy interest held by Claude Law that has become an undivided one-half tenancy in common interest has not been conveyed into the Beverly Law Family Trust.

The grant deed states that Beverly Law is the grantor and beneficiary of a revocable trust. Beverly Law's transfer of her real property interest to the trust is excluded from change in ownership as a transfer of property to a revocable trust under Section 62(d). Assuming that Ms. Law is the sole present beneficiary of the Beverly Law Family Trust, then she is the beneficial owner of an undivided one-half tenancy in common interest in the property held in trust, and Mr. Law is the owner of an undivided one-half tenancy in common interest in the property. As such, the termination of the joint tenancy interests and the creation of the tenancy in common interests constitute a change in ownership of the undivided one-half tenancy in common interest in the residence received by Claude Law (Sections 60 and 61(d) and (e)), subject to any applicable exclusions from change in ownership.

We note that since you have not provide any copies of the pertinent trust documents for the property transfers in samples A and B, this discussion is based entirely on the facts presented herein. If the trust documents or other pertinent documents vary from the assumptions set out, our conclusions may not apply.

With respect to the transfers of real property into trusts, as represented by the documents in samples C and D, you state that you do not believe that an "abstract of trust" can be used to convey property into a trust.

Sample C.

The "abstract of trust," consists of selected pages of the actual Trust Declaration of the Donna L. Brooks Trust that discuss the powers of the trustor and trustee and is signed by Ms. Brooks as both trustor and trustee. The first page states that "the provisions are found in the Trust Declaration and may be relied upon as a correct abbreviated statement of the operation of the trust during the lifetime of the trustor..." An abstract of trust is, as indicated, an abbreviated statement or summary of the trust provisions, and as such, the document does not serve to actually transfer property, as you have concluded. The abstract of trust indicates that that the Donna L. Brooks Trust holds two properties (5411 Bahia Lane in La Jolla and 8515 Chole Ave. in La Mesa California). The California Probate Code requires actual transfer of the properties by the owner to a trustee. (Section 15200(b)) Since your office apparently was not provided with a copy of a deed or deeds executed to transfer these properties into trust, you would have to ascertain if a valid transfer or transfers have occurred. Assuming the subject properties held by the Donna L. Brooks Trust were previously the sole separate properties of Donna Brooks and were effectively transferred by deed into the trust, with Donna Brooks as the present beneficiary, the transfers could be excluded from change in ownership under Section 62(d), since the trust is revocable and she is a present beneficiary of the trust.

It would appear from the abstract of trust that Ms. Brooks has created a trust under the laws of this state, which provide that a trust can be created by the property owner declaring that she holds the property as trustee. (Probate Code Section 15200(a)). Further, she has recorded the abstract of trust in the county recorder's office in San Diego County where the subject properties are located. The recording of the abstract of trust merely provides notice of the trust ownership of the subject properties. As discussed previously, Probate Code Section 15210 provides that a trust that relates to real property may be recorded in the county recorder's office in the county where the property is located, however, the statute does not require that the entire trust document be filed with the recorder's office.

As discussed previously, the abstract of trust states that Ms. Brooks is the trustor of a revocable trust in which she also is the trustee. The document also states that as trustor, she is entitled to receive the income from the trust and to invade the principal, which also makes her a beneficiary. Assuming the provisions of the abstract of trust are a correct statement of the actual Trust Declaration, as indicated, there would be a merger of equitable and legal title in Ms. Brooks, which would cause the trust to terminate, unless the Declaration of Trust provides for one or more successor beneficiaries after her death. (Probate Code §15209(a)).

Sample D., Declaration of Trust

Paul and Doris Seramur, as Trustors/trustees, have recorded with the San Diego County Recorder's office, a "Declaration of Trust," which is an actual trust document; rather than an abstract of trust. Thus, under state law, the Seramurs have created a trust by declaring that they hold the property as trustees. (Probate Code Section 15200(a)) The subject of the trust document apparently is the residence of the Seramurs, Coronado Point condominium #201, 1101 1st St. in the City of Coronado. However, the Declaration of Trust did not serve to transfer the residence from the Seramurs into the trust, as you have concluded. As previously discussed, the Probate Code requires the actual transfer of the property by the owner to another person as trustee. (Section 15200(b)) In this case, the Seramurs state in the "Legal Contractual Agreement" that they intended to quitclaim the property to the trust, which would be a transfer from the Seramurs to the Seramurs, as trustees. Review of recordings in the recorder's office in San Diego County would disclose a recorded quit claim deed.

The Declaration of Trust indicates that the trust is revocable (paragraph 10) and has an addendum attached, "Schedule A," which identifies the equity interests of the beneficiaries on page 4 and contains a "legal contractual agreement" on page 5. The provisions of Schedule A indicate that the Seramurs have a contract with Mr. Carlson, who has been an investor, purchasing equity in the condominium. The agreement states that Mr. Carlson has made an irrevocable assignment of his Safeco Insurance Annuity to the Seramurs for their use in exchange for an equity interest in the condominium. A contract to purchase equity in the condominium between the Seramurs, as trustees and Mr. Carlson, however, does not necessarily create a trust relationship, and may not be within the trust purpose.

"The payment of money may create either a debt or a trust, depending on the intention of the parties. If the intention is that the money must be kept or used a separate fund for the benefit of the payor or a third person, a trust is created. However, if the intention is that the person receiving the money is to have the unrestricted use of it, being liable to pay a similar amount whether with or without interest to the payor or a third person, a debt is created." (60 Cal Jur 3d (Rev) Trusts § 3)

Thus, it is the Assessor's responsibility to determine if the relationship between the Seramurs and Carlson is that of trustees and beneficiary or that of creditors and debtor, or if the Seramurs and Mr. Carlson are co-investors in the property. Additional information from the Seramurs is required to determine if the facts in this situation constitute a debt or a trust. Accordingly, if a trust relationship exists as to moneys received by the Seramurs from Carlson, a valid trust purpose exists. Nonetheless, a trust relationship does exist as to the condominium held in trust, between the Seramurs as trustees and present beneficiaries and their designated remainder beneficiaries, the Seramurs' sons and Ralph B. Kimball, which provides a valid trust purpose.

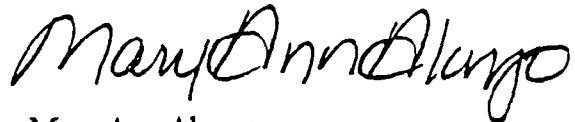
Finally, if there has been a valid transfer of the Seramurs' residence into the trust, by execution of a quitclaim deed, this transfer of real property has not resulted in a change in

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ownership because the trust is revocable and the transferors, Paul and Doris Seramur, are the present beneficiaries, since they apparently reside at the condominium. (Section 62(d))

We hope this letter has been responsive to your inquiry. The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,



Mary Ann Alonzo  
Tax Counsel

MAA:sao

cc: Mr. James Speed, MIC:63  
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